

1 include "everything" into the entire record. We are presenting only the important materials. But  
 2 there are still quite a few.

3 **Q: WHAT EXHIBITS IN THE UTEX EXHIBIT BOOK WILL YOU BE USING IN**  
 4 **SECTIONS 1 AND 2 OF YOUR TESTIMONY?**

5 A: I will be presenting Exhibits 3, 8, 9, 12, 17, 29, 42, 46, 64, 65, 66, 67, 68, 69, 70, 71, 72,  
 6 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98,  
 7 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117,  
 8 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136,  
 9 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 146, 148, 149, 150, 151, 152, 153, 154, 155,  
 10 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174,  
 11 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193,  
 12 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212,  
 13 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231,  
 14 232, 232, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250,  
 15 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269,  
 16 270, 271, 297 & 765.

17 Additionally, the pictorial timeline below for these sections of my testimony mark certain events  
 18 as either Publicly Available (**PA**) or as produced in Discovery (**D**). These are:

19

Date	Historical Event Marked with a PA or a D
11/15/2002	MOU with AT&T which adopted "non-important" sections of the ICA from others - i.e. EPGN - so as to focus on our core issues
3/4/2003	DPL filed with SWBT amended response
4/25/2003	PUC Order to Start Over since the parties cant make a side by side DPL (due to Bell refusing to deal)
6/20/2003	Start Over schedule in 26381
2/12/2004	Free World Dial-Up Order at FCC
4/24/2004	AT&T Phone to Phone IP Service Ruling at FCC (CLEC's Exempt from Access under foot note 92)
6/21/2004	Diane Parker e-mail to lawyers in 29944

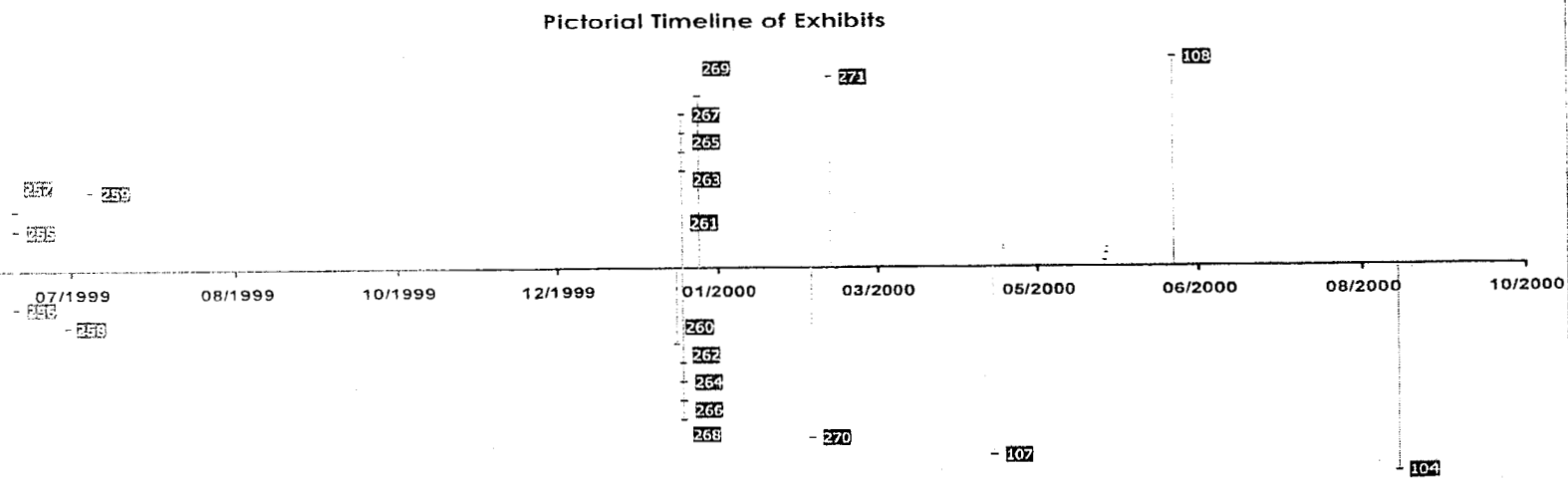
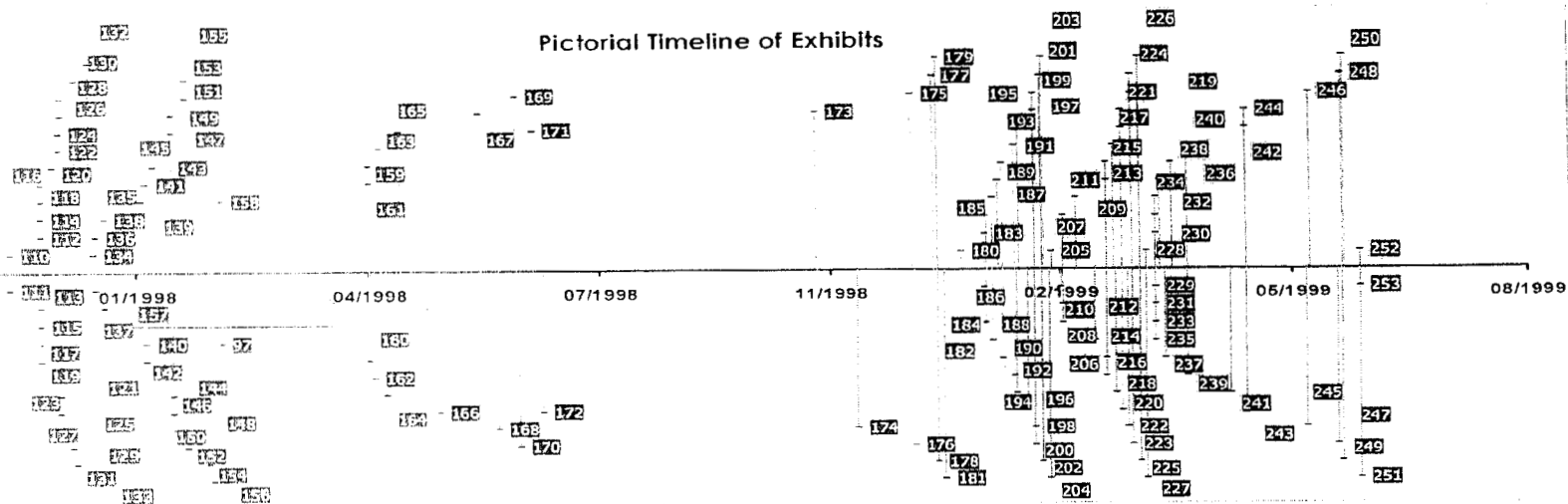
- 7/16/2004 Our Initial Complaint in 29944 in July of 2004 and asked for expedited relief (our VOIP issues were removed because we had no live traffic) - thus not heard - not "ripe" - we were told we could deal with these issues in the concurrent Arbitration.
- 11/12/2004 Vonage Order at FCC
- 11/20/2004 SBC Files its Tip Top Tariff with FCC (UTEX requests explanation with respect to violating our ICA) Told that Tip Top is voluntary
- 3/24/2005 Arbitration Award in 29944 which says AT&T has to do ISDN and can't prohibit our traffic via 911 issues. Spring of 05 - Business decision to expand into multiple Cities in Texas.
- 4/27/2006 Arbitrators Dismiss 26381 stating, "In this docket, VOIP issues constitute the essence of the disputes to be resolved." And then dismiss the case consistent with how the Commission treated VOIP in 28821. We appeal.
- 7/24/2006 Initial Missoula plan Filed
- 8/9/2006 UTEX Appeals PUC Decision to Abate to Fed Court.
- 9/1/2006 PUC Reactivates 32041 (procedurally then pled as active in Fed Court as part of PUC Defense on abatement)
- 10/6/2006 AT&T creates 33323 based upon its Billings and this case is combined with 32041
- 11/6/2006 AT&T/Friends of Missoula file their "Interim Final Solution." Which is exactly how AT&T appears to treat the historical and current UTEX Traffic.
- 5/16/2007 Google and others file in Support of the "UTEX" at the FCC
- 6/18/2007 UTEX Presents the Universal Tele-traffic Concept to the FCC. It was well received and encouraged as superior to the Missoula Interim Final Solution;
- 11/15/2002 Bell Refuses to address any new issue presented by UTEX - in essence they refuse to negotiate
- 6/1/2004 Actual Informal Dispute Meeting where SBC engineers were ordered not to communicate to us related to our issues because we have threatened a complaint over the issues we are meeting about.
- 8/1/2004 UTEX goes live with first Interconnection via SS-7 after repeated rejections on ISDN PRI (Business decision was that regulatory decisions on Signaling, Routing and Rating of new technology traffic are imminent);
- 11/1/2004 (Informal Bill Dispute and resolution on VOIP in our favor) (Business decision made to Expand to additional Markets);

- 11/1/2004 AT&T refuses to acknowledge any rights UTEX has to send a Bill to AT&T pursuant to the ICA and breaches (including breaching 29944 orders on ISDN Interconnection). UTEX files suit on sworn account in state court.
- 11/30/2004 3rd round of Negotiations with SBC on new ICA where UTEX described in detail its Business Plans to "compete" with the new TIP TOP offerings. Business decision made to simplify ICA to include only those attachments which we need for operation and to more narrowly focus on new technology traffic. We describe our network, how everything is treated local, how only ESPs are allowed, how UTEX is focusing on new technology providers, and how we exclude Legacy IXCs. We presented our current call flows and treatments of new technology traffic and signaling from our customers via SIP through to SS-7 for passing traffic with SBC. Bell asked lots of questions, especially about our technology, but did not agree to a single concept or proposal. We were able to divine that SBC intended to treat ALL new technology traffic as traditionally IXC Access through its proposed ICA terms including their Tip Top. SBC stated that we should be limited to providing service to only end user customers - no wholesale should be allowed.
- 2/18/2005 58 procedural filings including painstaking creation and explanation of Decision Point List items showing that the underlying issues involve how two carriers signal, route and rate traffic to and from new technology providers and detail out what competitive restrictions, if any, on either a wholesale or retail level should exist. They also detail out that the same underlying issues are were present in our complaint case 32041. There was never a factual Hearing.
- 12/15/2005 IGIPOP Tariff Amended to specifically incorporate our CPN Policies and to implement Signaling Layer Translation Service;

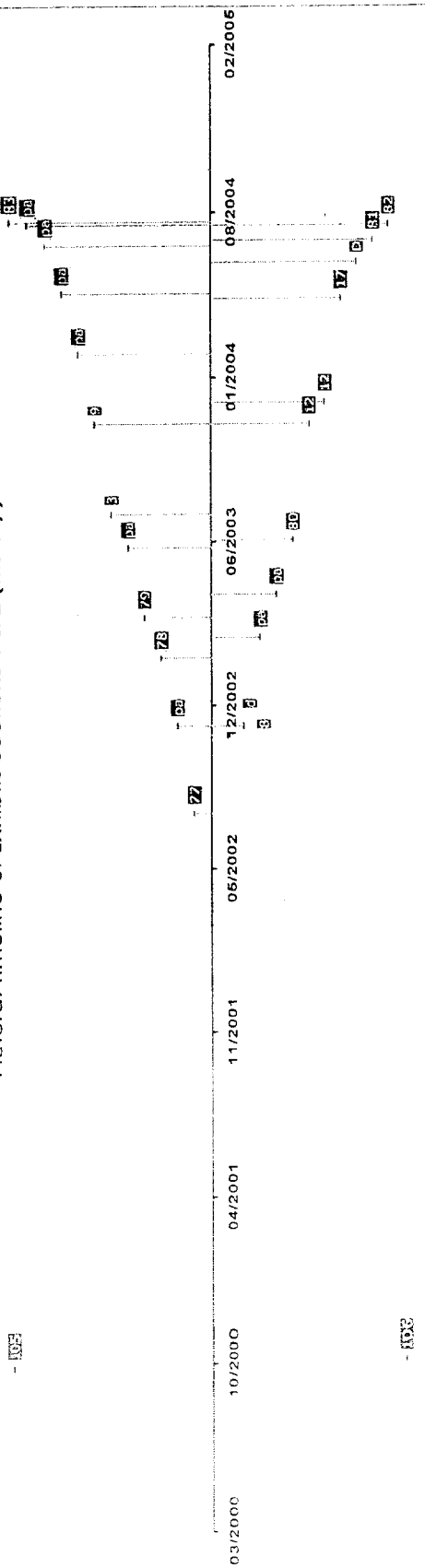
1  
2 Below is a pictorial timeline summarizing some of relevant testimony, filings and hearing  
3 transcripts from Docket 17922 and from 26381 and 29944 at this Commission as well as other  
4 material that support the statements I make in this testimony (the timeline lists all of the above  
5 exhibits and makes references to the above list.) Originally, I thought that UTEX might request  
6 official notice of the entire records in those cases, but then I realized that the entire record would

1 literally stretch from ceiling to floor and back along the wall. Thus, in order to save trees and  
2 some time for the Arbitrators I have referenced the portions of the record that I felt to be directly  
3 relevant to the issues in this Complaint. Even so, the attachments are large – for example, the *en*  
4 *banc* Commission hearings on March 9th and March 25th of 1999 comprise over 1,000 pages. I  
5 apologize in advance for the volume of information I included in this portion of my testimony.  
6 Since the same issues were exhaustively arbitrated before, however, and since UTEX's primary  
7 legal argument is that it is not here to reconsider but only to implement the intended meaning of  
8 the contract, the record and the resulting decisions from the PUC when UTEX/WCC did this  
9 before are relevant, complete and clear. It is necessary to at least give this arbitration panel and  
10 the Commissioners a taste of that record to show that the issues were and still are the same.

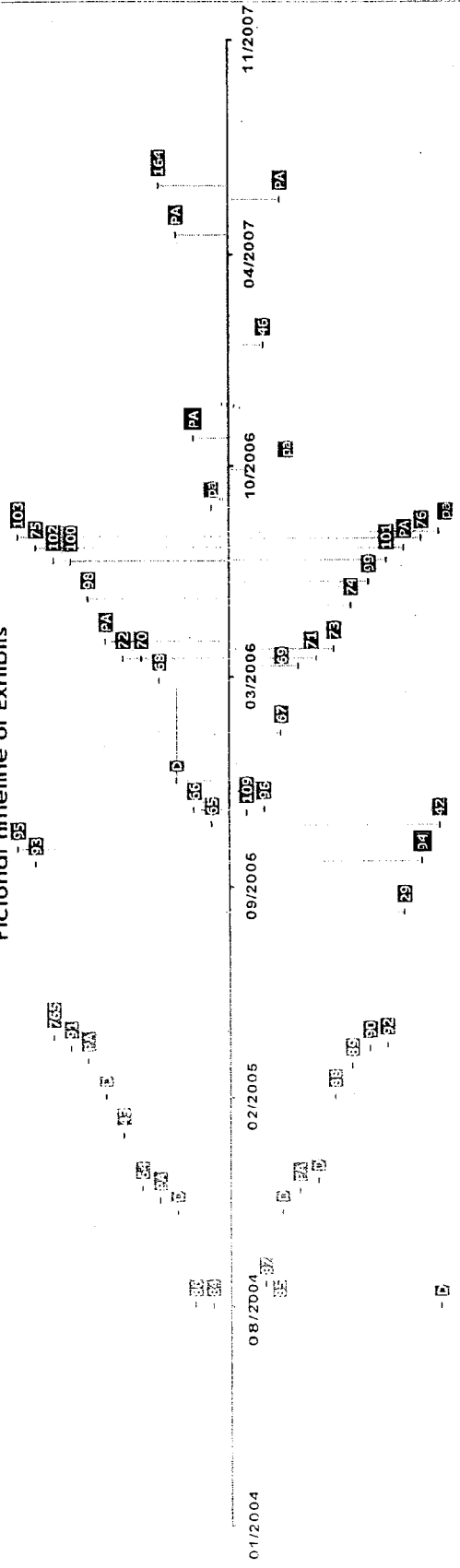
11 As a note, in an effort to further save trees and to minimize the amount of paper to  
12 produce and reproduce in this case, all of the UTEX witnesses will create and use pictorial  
13 timelines when they refer to documents and exhibits. I have also asked my attorneys to make  
14 such documents available on digital media as well as to produce an "Exhibit Book" that all of  
15 our testimony will refer back to. Below is the Pictorial Timeline for these Sections One of my  
16 Testimony. The numbers refer to exhibit in our exhibit book. If it has a D it was an item  
17 produced by UTEX in Discovery. If it has a PA it is a publicly available document or  
18 communication.



## Pictorial Timeline of Exhibits Sections 1 & 2 (History)



## Pictorial Timeline of Exhibits



1 **Q: WHAT WAS THE IMPLEMENTATION POLICY THE COMMISSION**  
2 **ESTABLISHED IN THE WCC CASE?**

3 A: The same question was asked more than three years ago in Docket 29944. Here was my  
4 answer then: "The PUC's policy in the WCC cases was that SBC should first provision network  
5 elements and interconnection requested by a competing CLEC, and then dispute any specific  
6 term, condition or price. The reason was that allowing SBC to block anything until every nit is  
7 picked obviously means that there will never be competition, since there will always be details  
8 and disputes. SBC cannot refuse to implement any part of the agreement until all issues are  
9 resolved, because all the issues will never be resolved. SBC is in the regulatory issue-generating  
10 business."

11 Since the ruling in that case, which at the time I viewed as a victory for UTEX, AT&T  
12 has absolutely refused to implement any unique term in the UTEX agreement. This is the heart  
13 of the problem. The UTEX agreement is different. The unique terms are the heart of our business  
14 plans.

15 AT&T has shown that it is a great "nit picker" even if it can't identify the nit. Because  
16 the PUC has refused to make any interim ruling on any implementation or billing issues, nearly 3  
17 years have gone by since the ruling in Docket 29944. The result is UTEX has been forced to  
18 operate with monkey wrenches in our spokes. We have been deprived of our rights under the  
19 contract. This has harmed UTEX. This has harmed competition. This has harmed the consumers.  
20 This has harmed society.

21 **Q: WHY HASN'T THE COMMISSION ACTED HISTORICALLY AND WHY IS IT**  
22 **ACTING NOW?**

23 A: I think the Commission should have acted long ago. It confounds me why this  
24 Commission abated these same issues in the context our replacement ICA. UTEX has asked for

1 emergency relief three times. After Docket 29944, which dealt with many of the same issues in  
2 this case, I suspect the Commission and UTEX both focused its efforts in the now abated  
3 arbitration case of Docket 26381. If the commission had arbitrated our case, we would not have  
4 this complaint.

5 For a period of a year or so (from early 2005 until April 2006) the Commission, like  
6 UTEX, was waiting for a new arbitration so a new contract could resolve the issues  
7 prospectively, and UTEX would then deal with the historical breaches after prospective relief  
8 was granted. In November of 2005, for example, UTEX presented a specific language DPL in  
9 Docket 26381 that if arbitrated would have clearly and cleanly dealt with each and every issue in  
10 this complaint case on a prospective basis. UTEX clearly wears on our sleeves that we are  
11 unique and operate our business differently than all other LECs. For example, in the DPL in  
12 Docket 26381 most of the issues related to whether we would just re-litigate the fundamental  
13 principles arbitrated in Waller Creek or we would build on them after modernizing the rest of the  
14 terms. The overarching public policy issues that permeated through our contract proposals and  
15 our DPL with AT&T in Docket 26381 also permeates all of UTEX's current operational issues  
16 and this Docket 33323 DPL. AT&T does not want to obtain a decision on the issues in Docket  
17 26381 (with the attendant approval of new terms) in what would be another precedent setting  
18 case. Remember Waller Creek was and still is good law even beyond just the contract terms  
19 because it was appealed through the 5<sup>th</sup> Circuit and became precedent. If UTEX litigated these  
20 same issues in the context of a new ICA, the results could not only be adopted by other CLECs,  
21 but our new terms and concepts would be able to spread to other states. There is no doubt that  
22 AT&T will simply not allow any decision against their policy positions in this case to be applied



1 outside of the current UTEX/AT&T relationship in Texas. And, if they can avoid a decision in  
2 even this complaint case, so much the better.

3 **Q: WHAT PROBLEMS ARE RELATED TO THE PUC ACTING IN THE**  
4 **CONTEXT OF A DISPUTE RATHER THAN AN ARBITRATION?**

5 While basically the same policy issues are presented in this case and Docket 26381,  
6 because this is a complaint case the Commission does not have the power to craft new terms.  
7 Clearly, from the Commission perspective where language is simply not in the existing contract  
8 and a new policy needs to be created to resolve a dispute,<sup>11</sup> it would be helpful for this  
9 Commission to be able to craft new language. I am very concerned that because no new language  
10 can be added, we will get another "empty ruling" like we got in Docket 29944 where no matter  
11 what is arbitrated and what the ruling is, no real change in AT&T's business practices will occur.

12 Luckily, this complaint case does not really have many new issues.<sup>12</sup> It is mostly AT&T's  
13 attempt to secure a rehearing and reconsideration of issues decided long ago. There are  
14 exhaustive records on the WCC fiber information and fiber ordering process. I was a party to this  
15 every step of the way. I was there. I was a witness. I saw what happened, and what resulted.

16 In the WCC cases, there was exhaustive debate over what "Interconnection Methods"  
17 should be allowed and under what conditions. There was further debate in Docket 29944. There

---

<sup>11</sup> For example, in defining the content requirements, if any, of CPN representation when voice enabled Internet applications like Skype or Facebook or XBOX or PlayStation or Ooma launches a VoIP call session.

<sup>12</sup> To the degree it has new issues they are more about implementation policies. How do we actually implement ISDN Interconnection? Why doesn't AT&T route to UTEX the non-geographical "500" numbers that were allotted to UTEX by the FCC for use by ESPs? How do we actually implement SS-7 B-links under our ICA? If a CPN content policy that requires data manipulation is appropriate what is it and how do the parties "Manipulate" the content presented by their respective customers in a way to prevent fraudulent activities and will both parties agree to indemnify each other?

1 was an express policy disagreement as to whether ISDN PRI Interconnection should be allowed  
2 (AT&T said no while WCC and PUC said yes). There was very clear testimony and very clear  
3 agreement from both sides as to what "ISDN PRI Interconnection" is and how "ISDN PRI  
4 Interconnection" would work. Everybody at the time - WCC, AT&T and the PUC - clearly  
5 knew and understood that ISDN PRI had become a proper and lawful method of Interconnection.  
6 The PUC approved ISDN as an interconnection concept, with the proviso that AT&T must be  
7 compensated for the functions AT&T provided and AT&T would not be allowed to "double dip"  
8 into access charges since WCC would pay for the functions used in ISDN Interconnection.

9 WCC specifically arbitrated the right to treat all ESP traffic as not "exchange access" but  
10 instead as "telephone exchange" service. This arbitration was extremely high profile. The  
11 Commissioners sat en banc and created a detailed record with detailed discussion about WCC's  
12 rights to engage in wholesale business and not just mimic how AT&T runs their business. WCC  
13 specifically alleged that AT&T' (SBC at the time) true motivation in the WCC case with respect  
14 to ESP traffic was to eliminate the ESP exemption and we in fact discovered that to be true and  
15 offered testimony as to why this is bad policy. WCC also showed that AT&T (SBC at the time)  
16 knew exactly how the application of the ESP exemption worked and that it was good law. WCC  
17 explicitly dealt with bi-directional traffic for ESPs. WCC explicitly and exhaustively dealt with  
18 the "jurisdictional nature of the Internet." Finally WCC demanded that "if the Commission does  
19 accept that ESP traffic is not subject to reciprocal compensation because it is jointly provided  
20 access with zero revenue to share between the CLECs, WCC requests an explicit ruling that once  
21 a call goes to an ESP, any resulting interexchange traffic conducted through that ESP and  
22 ultimately terminated into the SWBT network does not result in additional compensation to

1 SWBT.”<sup>13</sup> The Commission did not have to respond to the WCC request because it correctly  
2 ruled that ESP traffic, consistent with the proper application of the ESP exemption, should be  
3 treated as “telephone exchange” and not “exchange access” and that any attempt to  
4 “jurisdictionalize” the technology behind the Internet can not work and such analysis is not  
5 appropriate. Importantly, in the WCC award, a cost based compensation rate was awarded and  
6 symmetrically applied. WCC then implemented the award from this Commission by including  
7 unique and specific language related to ISPs, Compensation Terms, and ESPs.

8 After the WCC Arbitration Award, WCC then entered into a voluntary agreement to  
9 further ease the administrative billing and collections between the parties and to functionally  
10 make it clear and broad with respect to applying the “no compensation” terms to the entire WCC  
11 agreement.<sup>14</sup> This was a negotiated bargain above and beyond the arbitrated agreement.

## 12 THE SOUP

13 Q: WHAT IS “THE SOUP?”

14 A: “The Soup” is AT&T’s recipe to abuse the legal/regulatory process to delay, deny or block  
15 competitive entry by a CLEC. Here is the origin of the phrase “The Soup”:

16 Page 28-29 of March 25 1999 Texas PUC Implementation Hearing on WCC’s Allowed Business  
17 Plans:

18 COMM. WALSH: . . . I think anything that’s under the FTA -- which you talked about -- that  
19 parties at least have abinitio (phonetic) -- is that a good word? -- ought to be able to -- maybe it’s  
20 prima facia; I don’t do these law things very good -- but they ought to be able to presume that

---

<sup>13</sup> SWBT’s position in the WCC arbitration was that ESP traffic was actually IXC traffic that should get a rate of “zero.”

<sup>14</sup> At this time, WCC had the only agreement that arbitrated the right to receive recip comp for Internet traffic. As long as this agreement could be adopted, AT&T would have to pay compensation to the adopting CLEC. By agreeing to broad no compensation language tied to the identity/classification of the customer, both sides got a benefit. No carrier comp business could opt into the WCC agreement and get paid, and I could focus on traffic that is outbound and not inbound.

1 they can do anything that's allowed under the FTA under their contract unless there's some  
2 specific provision in there that says that this contract is limited to not doing this.

3  
4 CHAIRMAN WOOD: That's where I came out; otherwise we've got -

5  
6 COMM. WALSH: They'll never get done if we do it the other way because they'll say well, no,  
7 no, we didn't think you were going to do that and we'll be back in the soup - (emphasis added)

8 Put another way, "The Soup" is where AT&T wants to boil all potential Competitors,  
9 rather than meeting them in the marketplace. The Soup is the rule that ICAs are restrictive, not  
10 permissive, and that anything that is not mandatory is prohibited. The PUC rejected The Soup in  
11 the WCC cases, but AT&T wants to try again, and again, and again.

12 **Q: HOW IS "THE SOUP" RELEVANT TO THIS COMPLAINT?**

13 A: The Soup is where we are right now because AT&T likes the Soup, and will not accept  
14 that the PUC banned it from the menu in the WCC case and in our ICA. AT&T refuses to act in  
15 good faith and implement the terms of the UTEX ICA even though it has the express obligation  
16 to do so in GTC § 36.1 of the Agreement.

17 With one minor exception that no longer applies, the Waller Creek Agreement and thus  
18 the UTEX agreement expressly have no restrictions on what our business plans can be. The  
19 Commission's clear policy was (and still is) to promote competition by allowing competitors to  
20 invest in and deploy their own technology and to create market based innovations. We can  
21 provide wholesale and/or retail service and deploy innovative new services AT&T does not  
22 provide. AT&T cannot continually veto or obstruct those plans and should not be allowed to  
23 consistently invent new reasons or excuses to tell us we cannot do this. If something UTEX  
24 wants to do is not expressly prohibited, it is allowed. Otherwise, "we'll be back in the soup."

25 The WCC interconnection agreement is the UTEX agreement. I was party to each and  
26 every legal and policy argument in those cases. The same policy as well as the same decisions

1 which were applied to WCC must be implemented here. The records created in those cases are  
2 clearly relevant to the meaning of the UTEX/AT&T Interconnection Agreement

3 Section 2 UTEX' BUSINESS PLANS

4 **Q: PLEASE DESCRIBE UTEX COMMUNICATIONS CORPORATION.**

5 A: UTEX is a competitive local exchange carrier. We provide telephone exchange service  
6 (or "information access-like" service) to enhanced and information service providers. This  
7 service is a jurisdictionally interstate, FCC-tariffed service that competes to some extent with  
8 AT&T's "TIPTOP" service, which is also FCC tariffed. We call it "Internet Gateway  
9 Intermediation - Point of Presence" or "IGI-POP." Generally speaking, UTEX's IGI-POP  
10 service provides connectivity to the rest of the public switched telephone network and can be  
11 used by ESPs/ISPs to originate traffic to or receive traffic from the PSTN. We "intermediate"  
12 between ESP/ISP "new technology" offerings - whether they are called "services" or  
13 "applications" - and the traditional Legacy interconnected networks operated by other LECs and  
14 CMRS carriers that use the North American Numbering Plan ("NANP") as an addressing  
15 scheme.

16 **Q: DO YOU PROVIDE "BASIC LOCAL TELECOMMUNICATIONS SERVICE"**  
17 **OR "LOCAL EXCHANGE TELEPHONE SERVICE" AS DEFINED BY THE STATE**  
18 **PURA OR PUC RULES?**

19 A: No. 100% of our customers are ESPs/ISPs and 100% of our traffic today is "destined for  
20 or received from an ESP" as defined in GTC § 53.7. Although our service is a "telephone  
21 exchange service" (or an "information access-like" service) as defined by the Communications  
22 Act, it does not meet the definition of a "Basic Local Telecommunications Service" or a "Local  
23 Exchange Telephone Service" as defined in PURA § 51.002(1) and (5). For example, we do not

1 provide "connections between a customer premises and a long distance provider serving the  
2 exchange." Our service is jurisdictionally interstate, not intrastate, because it involves provision  
3 of PSTN connectivity to enhanced and/or information service providers and the FCC has  
4 preempted state regulatory authority over such services. Our customers are all ESPs/ISPs, and  
5 under state law they are not "telecommunications providers" because of PURA §  
6 51.002(10)(B)(i). Our ESP/ISP customers are not carriers and are therefore considered to be "end  
7 users" under FCC rules and under the express arbitrated terms of our ICA. They do not purchase  
8 local exchange service from UTEX; instead what they procure is "telephone exchange" service  
9 (or "information access-like" service) under the federal regime. Basically, we invented our  
10 service specifically for these new technology service providers and application providers, and as  
11 of yet, no one else has copied it. AT&T wants to nip all this in the bud, and thus eliminate UTEX  
12 as a potential new technology competitor.

13 **Q: DO YOU PROVIDE "SWITCHED ACCESS" SERVICE AS USED IN PURA AND**  
14 **DEFINED BY PUC SUBSTANTIVE RULE 26.5(209)?**

15 **A:** No. The rule defines "switched access" as

16 (209) **Switched access** — Access service that is provided by certificated  
17 telecommunications utilities (CTUs) to access customers and that requires the use  
18 of CTU network switching or common line facilities generally, but not  
19 necessarily, for the origination or termination of interexchange calls. Switched  
20 access includes all forms of transport provided by the CTU over which switched  
21 access traffic is delivered.

22 Although we do have both an interstate switched access tariff and an intrastate switched  
23 access price list, we have no "access customers." PUC Subst. R. 26.5 defines "access customer"  
24 and "access service":

25 (1) **Access customer** — Any user of access services which are obtained from  
26 a certificated telecommunications utility.

1           (2) **Access services** — Certificated telecommunications utility services which  
2           provide connections for or are related to the origination or termination of  
3           intrastate telecommunications services that are generally, but not limited to,  
4           interexchange services.

5           As noted, we do not at present provide any intrastate services to any customer. By  
6           definition, therefore, we cannot be providing "access services" as defined in the rule, and  
7           accordingly cannot have any "access customers."

8           **Q: DO YOU PROVIDE IGI-POP SERVICE TO ANY CARRIER CUSTOMERS?**

9           A: No. We have no carrier customers for IGI-POP; indeed the product we provide expressly  
10          precludes carriers from eligibility. Each IGI-POP customer must certify that it is not a carrier and  
11          is entitled to the so-called "ESP Exemption" because it provides enhanced and/or information  
12          services. I will note that several "Carriers" have tried to circumvent our restriction and we  
13          believe we have done a very good job at not allowing this to happen by properly implementing  
14          the intent behind the ESP exemption. Several of our responses to AT&T's discovery questions  
15          detail our efforts in this regard.

16          **Q: DID UTEX EVER PROVIDE TRADITIONAL LOCAL EXCHANGE SERVICE?**

17          A: Yes, for a while we did have a smattering of customers to whom we provided service that  
18          met the PURA definitions. For example, we attempted to transition American Airlines and  
19          Southern Methodist University to our facilities-based platform when the CLEC that served them  
20          via UNE-P arrangements went into bankruptcy. We did also provide ISDN-PRI based service to  
21          Williamson County for a while. AT&T, however, materially interfered with the transition from  
22          Premiere to our platform and then lured away American Airlines and SMU. After we settled the  
23          tortious interference claim against AT&T for that fiasco, we decided to abandon the market for  
24          traditional services. AT&T's domination is complete in that area, and for some reason regulators  
25          and courts have not seen fit to constrain AT&T's anticompetitive actions. We choose to not

1 mimic the many failed CLECs who tried to directly compete with AT&T in the Legacy services  
2 market and wrongly believed that the rules would be enforced so as to allow them to do so.

3 **Q: SO WHAT IS YOUR FOCUS AND SERVICE MARKET?**

4 A: UTEX decided to focus entirely on our basic mission and business plan: support the  
5 deployment of new Internet-based technologies and services by intermediating IP-enabled  
6 service provider traffic with the Legacy network. We are uniquely situated in this respect, both in  
7 terms of our background and experience and because of the terms in our ICA.

8 **Q: HOW ARE YOUR ICA AND BUSINESS PLAN UNIQUE?**

9 A: Our ICA is unique in many respects. First, the ICA provides that there is "no  
10 compensation due" for traffic "destined for or received from an ESP." We developed a service  
11 and a business plan that implements the fundamental premise that we will not pay AT&T for any  
12 interconnection-related feature, function or service,<sup>15</sup> including transport and termination, and we  
13 will not ask for or expect any payment from AT&T or any other CLEC, CMRS provider or IXC  
14 if they do not charge us. All of our revenues come entirely from our new technology customers;  
15 we do not in any way rely on inter-carrier compensation in any form. That is what the FCC said  
16 it wanted the industry to move toward several years ago. That is what this Commission said it  
17 preferred as well. So that is what we have done.

18 AT&T (it was, of course, SWBT at the time) came to me in 1999 when I was still  
19 President at WCC and proposed to amend the arbitrated compensation rules to move from  
20 payment of compensation for traffic to or from ESPs. I note that after the post interconnection  
21 dispute resolution-related Order on Appeal of Order Nos. 9 and 2. The PUC's decision directly

---

<sup>15</sup> We recognize and do not oppose cost sharing of facilities so long as the FCC's rules on cost responsibility are honored, and the price meets the cost based standard set out in the Act.



1 held that WCC (and therefore UTEX) was explicitly permitted to pursue all wholesale and retail  
2 business plans without any material restriction.<sup>16</sup>

3 SBC wanted bill and keep for dial-up Internet traffic. We negotiated, and reached  
4 agreement on terms that were significantly broader than "bill and keep" for "local" traffic. This  
5 agreement is not limited to "local" to and from ESPs. It applies to all ESP traffic.. As I describe  
6 above, we had already arbitrated the right to "treat" all traffic to or from ESPs as "local" for  
7 routing and rating purposes without regard to mystical jurisdictional arguments that support  
8 gaming of the compensation rules.

9 When I was considering their offer, I was already anticipating the disputes the  
10 Commission ultimately had to decide in the "FX Docket." I also anticipated a potential change in  
11 treatment of ESPs at some point in the future (remember SBC had told us in the WCC case that  
12 they wanted to secure such a change). So, I counter-proposed and insisted on terms that used the  
13 phrase "no compensation due or payable" for ESP traffic. I did this so as to distinguish the result  
14 from regular "bill and keep." Our agreement and treatment of ESPs was never limited to the  
15 geographic relevance laden concept embedded in "local," e.g., between two numbers or persons  
16 "present" in the same local calling area. Under our ICA terms, calls "destined for or received  
17 from an ESP" were treated as "local." With this new language they would be treated as no  
18 compensation due or payable and they would continue to be routed and signaled as "local"  
19 regardless of the deemed "end points" or the rate center associations of calling and called  
20 numbers, the "meetSPACE" location of the communicating parties or one or more of the

---

<sup>16</sup> There was a transient policy restriction related to WCC's obligation to pay a residual interconnection charge, which was a type of "access rate element" when WCC directly served ordinary IXCs with Direct End Office trunking access services. That restriction expired and we do not provide direct end office trunking access service to any IXC.

1 communicating devices, the perceived jurisdictional nature of the call or any other of the  
2 constantly-moving and inconsistent "tests" AT&T has tried to use over the years.

3 The rules, the practices and the theory applied in the FCC's decisions on the ESP  
4 Exemption and the *ISP Remand* order take as a given that while ESPs provide a jurisdictionally  
5 interstate service and while they buy jurisdictionally interstate "information access" or  
6 "information access-like" or telephone exchange service, the traffic is rated and routed as if it is  
7 "local" traffic. The current ICA arbitrated this issue and was ordered to adopt the same result.

8 In the FX docket, this Commission carved out a rating exception to the compensation rule  
9 for "FX-like" ISP-bound traffic" and "FX-like" non-ISP traffic by saying that FX traffic is "bill  
10 and keep" rather than subject to the state § 251(b)(5) rate or the FCC's *ISP Remand Order*  
11 \$0.0007 rate. We never had to amend our ICA to implement either the *ISP Remand Order* or the  
12 result of the FX docket because the "no compensation" terms were already consistent with the  
13 results of both of those decisions. We were already at "no compensation due" for all ESP traffic.  
14 Consistent with § 252(d)(2)(B)(i), UTEX and AT&T have provided for "the mutual recovery of  
15 costs through the offsetting of reciprocal obligations, including arrangements that waive mutual  
16 recovery" in our § 251(b)(5) "reciprocal compensation arrangements for the transport and  
17 termination of telecommunications." The same price of "zero" applies for ESP/ISP traffic and –  
18 to the extent there may be any – traditional "local" traffic, consistent with the FCC's desire in the  
19 *ISP Remand*.

20 **Q: AT THE TIME YOU NEGOTIATED THIS PROVISION, WERE ALL ISSUES**  
21 **WITH SBC RESOLVED?**

22 A: Absolutely not. SBC felt strongly that this Commission committed reversible error by  
23 allowing access to dark fiber, allowing a new kind of interconnection and by allowing WCC to

1 pursue unique and wholesale business plans. I was the author of those plans just like I am the  
2 author of UTEX's business plan. Both business plans use the same ICA. Thus, in 1999, WCC  
3 lived under the constant threat that our ICA would be reversed by a federal court and/or  
4 remanded to the PUC with instructions to change the ICA.

5 **Q: WHAT HAPPENED TO THE SBC APPEAL?**

6 A: SBC lost in district court. They also lost at the 5<sup>th</sup> Circuit. The 5<sup>th</sup> Circuit's opinion  
7 directly addressed whether a new entrant can arbitrate for terms that cover a unique business  
8 plan:

9 Similarly, the district court noted in this case, "Already, inherent in § 252(i)'s  
10 language, incumbent carriers like Southwestern Bell must certainly negotiate or  
11 arbitrate interconnection agreements with an eye towards what future carriers may  
12 do with those provisions. In this case, the PUC specifically found that Waller  
13 Creek's unique business ventures required a modification of the AT&T terms. It  
14 was not error to arbitrate these terms into the Waller Creek Agreement. Does this  
15 create a 'ratcheting effect'? Perhaps so. But, this is Congress's policy decision to  
16 lay the burden upon incumbent carriers. Congress turns the wheel." District Court  
17 Order, filed July 2, 1999, at 15-16.

18 **Q: IF WCC (AND THEREFORE UTEX BECAUSE IT ADOPTED THE WCC**  
19 **AGREEMENT) WON THE RIGHT TO PURSUE A UNIQUE BUSINESS PLAN TO**  
20 **NEW TECHNOLOGY PROVIDERS, AND YOU FURTHER NEGOTIATED THAT NO**  
21 **COMPENSATION IS DUE FOR ALL SUCH TRAFFIC, WHY ARE YOU HERE**  
22 **BEFORE THE TEXAS PUC IN A CASE THAT INVOLVES, IN PART, DISPUTES**  
23 **OVER INTERCARRIER COMPENSATION, YOUR UNIQUE BUSINESS AND**  
24 **TRAFFIC FROM NEW TECHNOLOGY TRAFFIC?**

25 A: That is what mystifies me. Apparently, AT&T is not willing to abide by the rules or the  
26 terms of agreements it voluntarily negotiated or lost in arbitration. To me this case is not about a  
27 real dispute over what the agreement means. AT&T does not like what the terms say or mean so

1 it will not abide by them and is hoping it can secure a change in the contract, on a retroactive  
2 basis, without going through negotiation or arbitration. Of course, this would occur only after  
3 several years of obstruction, refusals to negotiate, flagrant disregard for the arbitrated terms and  
4 the negotiated amendment and many well-crafted dilatory tactics that delay any decision.

5 **Q: HAS UTEX EVER DESIRED A DELAY IN THE ADJUDICATION OF ANY**  
6 **DISPUTE OR IN THE MODERNIZATION OF ITS ICA THROUGH A FULL**  
7 **ARBITRATION?**

8 **A:** Absolutely not. As I have said over and over again, UTEX is after business certainty and  
9 UTEX is unique in that it pursues such certainty with respect to its different business model by  
10 openly and diligently bringing up issues that arise to this Commission for resolution. I take  
11 offence to any notion that UTEX is in any way responsible for any delay in resolution of any  
12 open issue.

## 1 SECTION 3 Part 1:

- 5 Does the existing ICA require AT&T to directly signal with UTEX using SS7 B-Links if UTEX requests direct signaling interconnection?
- 6 Should the Commission require AT&T to establish direct signaling layer interconnection via SS7 B-Links with UTEX pursuant to § 251 of the Communications Act and § 51.305 of the FCC's rules?
- 7 Did AT&T require UTEX to obtain unnecessary SS7 point codes before AT&T would accept an interconnection order?
- 8 Did AT&T fail or refuse to provide UTEX with connections through SS7 blinks under the parties' ICA?
- 9 Does the parties' ICA require UTEX to deliver traffic to AT&T's network using SS7 signaling protocol?
- 28 Has AT&T breached GTC §§ 9.3.1 and 36.1 by failing to act in good faith?
- 66 If so, will or must AT&T to route traffic to the non-geographic number as part of its CPN-based service offerings?
- 93 Should AT&T be ordered to interconnect with UTEX using SS7 B-Links?

2

3 Q: WHAT EXHIBITS IN THE UTEX EXHIBIT BOOK WILL YOU BE USING IN

4 SECTION 3a and 3b OF YOUR TESTIMONY?

5 A: I will be presenting Exhibits:

<u>Exhibit Number</u>	<u>Exhibit Number</u>	<u>Exhibit Number</u>	<u>Exhibit Number</u>
333	435	546	123
335	436	544	710
337	437	545	711
338	438	559	712
339	447	560	716
336	456	561	715
340	459	558	721
341	458	558	736
342	460	568	737
343	461	570	742
345	462	572	753
362	463	573	759
383	465	578	760
386	466	580	762
387	467	586	763

00036

384	468	589	764
398	469	590	765
400	470	591	766
401	476	592	767
402	482	593	768
410	483	618	769
411	484	619	770
413	487	620	771
414	488	621	772
415	494	622	773
416	512	623	774
417	521	624	775
418	528	625	776
419	531	626	777
420	533	627	778
421	532	628	779
422	534	629	780
423	535	635	781
424	536	651	782
425	541	655	783
426	542	661	784
427	543	665	785
428	547	703	786
429	537	434	787
430	538	540	788
433	539	298	43

1  
2 **Q: PLEASE PROVIDE A GENERAL EXPLANATION OF THE ISSUES RELATED**  
3 **TO THIS SECTION OF YOUR TESTIMONY.**

4 A: UTEX desires to establish peered direct interconnection of the parties' SS7 signaling  
5 networks. AT&T refuses to recognize UTEX as a peer network. Instead, AT&T wants to force  
6 UTEX to be an AT&T customer and "buy" the signaling related to interconnection.  
7 Alternatively, AT&T will "allow" UTEX to obtain signaling "service" from a third party, who  
8 then directly interconnects with AT&T.<sup>17</sup>

<sup>17</sup> This third party then has to "buy" some product from AT&T or one of AT&T's affiliates.

1           **UTEX asserts that AT&T is required by the Act, PUC rules and the ICA to directly**  
2 **interconnect with UTEX, as a peer and without charges, for the things necessary to allow**  
3 **the mutual exchange of traffic.**

4           I'm going to say this again, because it is my belief that when you boil down nearly every  
5 one of our operational issues related to Interconnection, you come again and again to AT&T's  
6 denial of the seminal right contained in the Act for the benefit of new entrants like UTEX.

7 **UTEX asserts that AT&T is required by the Act, PUC rules and the ICA to directly**  
8 **interconnect with UTEX, as a peer and without charges for things that are necessary to**  
9 **allow the mutual exchange of traffic between the two networks.** Further there is no contract  
10 restriction, restriction in the act, or any regulatory restriction that I know of that limits the service  
11 that UTEX can provide with the interconnection it secures.<sup>18</sup>

12           AT&T, on the other hand, refuses to accept that UTEX is in fact a "Peer." The deposition  
13 of Mr. Ellis, the statements by Mr. Faith of AT&T and the multi-year refusal to deal with UTEX  
14 all show this to be true. AT&T takes every chance it gets to protect its position as the dominant  
15 player in all things communicative. While this may be a good business practice for a monopolist,  
16 it is totally inimical to any reasonable environment that will support the Interconnection of two  
17 networks that is necessary to support the mutual exchange of traffic. AT&T must do that which  
18 is necessary to interconnect so as to allow traffic exchange. It is also bound by a statutory and  
19 contractual duty of good faith.<sup>19</sup>

---

<sup>18</sup> My testimony above details our business.

<sup>19</sup> UTEX's business plan is 100% telephone exchange service that pursuant to the terms of our agreement and is to be treated for routing and rating purposes as "Local." That is all we do. We require our customer to meet us at a Situs of the LATA for where it desires to intercommunicate with users on the PSTN. In this respect our service is a competitive alternative to, and has the same type of Situs requirement as to AT&T's TIPoP service. Other than that similarity our product is very different from TIPToP. We use better technology, we solve

1 AT&T, as a willful and intentional business practice, refuses to negotiate as a peer. In  
2 fact they simply will not deal with any type of interconnection unless it is part of an AT&T  
3 "Product" or a "Service" for which AT&T gets paid.

4 **Q: WHAT ARE B-LINKS, WHY DID UTEX FIRST ATTEMPT TO DEPLOY**  
5 **THEM, AND HOW DID UTEX ATTEMPT TO IMPLEMENT B-LINKS WITH AT&T?**

6 As AT&T's engineers have acknowledged B-links are "peer to peer" connections between  
7 Steps. They are used, by definition, as the way to signal between two "equal" networks at the SS-  
8 7 level.

9 UTEX first attempted SS-7 B-links when it became apparent that AT&T was going to  
10 stonewall ISDN interconnection even after the award in Docket 29944. This was in the April to  
11 June time frame of 2005.

12 UTEX had developed and deployed abilities well beyond that which is capable by  
13 AT&T's ordinary switches. When AT&T began its bad faith refusal to abide by the ICA-based  
14 ISDN interconnection terms<sup>20</sup>, UTEX tried to mitigate damages by attempting to interconnect  
15 and signal directly between our two network via SS-7 B-links.

16 Since our network and now our signaling capabilities are superior to what AT&T has  
17 deployed in its network, we have the technical ability to meet them as peers. AT&T's main and  
18 long standing argument related to ISDN Interconnection had been that they do not like the fact  
19 that it requires a "network to user" protocol.

20 One (but not certainly the only) reason WCC and UTEX pursued DINS interconnection  
21 is that it does not incur a major cost most CLECs face when they attempt to interconnect in and

---

different problems. we provide alternatives and we do not impose complete control over our  
customer or the ultimate user.

<sup>20</sup> This is covered in detail in my next section of testimony.



1 send traffic to multiple locations in a LATE and particularly when they begin to establish  
2 Depots. Each switch to which the CLEC connects, requires the CLEC to add an individual SS7  
3 point code into a link, and the third party SS7 vendors assess non-recurring and recurring charges  
4 for each one. This oftentimes means that interconnection in smaller towns and communities are  
5 not possible because the cost outweighs the benefit. My thought was that if I could obtain direct  
6 interconnection with AT&T through SS-7 B-links and if I managed my own signaling network I  
7 would not have to pay third parties for additional point codes. If the cost of SS7 interconnection  
8 could be reduced to that of ISDN interconnection, then I would be indifferent to the method that  
9 was used. Basically it was an "engineering" peace offering.

10 The engineering folks at AT&T were very receptive. But the "regulatory team" feigned  
11 confusion. The first request in April was followed by several e-mails that show this.<sup>21</sup> The  
12 principal documents associated with this period are Exhibits referenced on the pictorial diagram  
13 below from the April 2005 time from through the September 2005 time frame.

14 **Q: WHAT HAPPENED NEXT?**

15 AT&T sent us the "no CPN" bill in July of 2005.. This kept us busy because we did not  
16 understand the basis for the bills. I tried to remain focused and asked for and ultimately got a  
17 conference call put together with many responsible folks from AT&T. I suspect that one reason  
18 we got a call was that the engineering people in AT&T recognized that this was an olive branch  
19 by UTEX. From a strictly "Legacy Telecom" vantage point, it would be classic engineering.

20 Attached in a jacket to my testimony is the complete call from that day. My senior

---

<sup>21</sup> It is important to note that at the time of the request, no bills for "No CPN" or any "Access over Local" charges had been presented to UTEX. We were simply trying to grow our business.